

REMARKS

This responds to the Office Action mailed on September 21, 2004. No claims have been amended. Claims 1, 2 and 7-17 are now pending in this application.

Applicant does not admit that the cited references are prior art and reserves the right to “swear behind” each of the cited references as provided under 37 C.F.R. 1.131.

§102 Rejection of the Claims

Claims 1-2 and 7-17 were rejected under 35 USC § 102(a) as being anticipated by NOWTHIS.COM (hereinafter “the nowthis reference”). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991).

Among the differences, claim 1 recites

receiving at the database an indication that the user has clicked the interactive element, and incrementing a count of a stored number of indications for the review (1) in response to the indication and (2) if the stored number of indications does not exceed one indication for the review from the user. (emphasis added).

The Office Action indicated that the “nowthis” reference “disclosed, specifically, Amazon.com having implemented ‘x people found this review helpful. Y did not. Was it helpful to you? [YES] [NO].’ See, Page 2.” Office Action at ¶8. Based on this citation, the Office Action alleges the following:

[S]ince the sentence references ‘x people’, it must be presumed that each person is entitled to only a single vote, since a second vote from the same person would not increase the number of ‘people’ referenced. (emphasis added)

Office Action at ¶8.

Applicant respectfully traverses this allegation. In particular, Applicant traverses the presumption that each person is entitled to only a single vote. Applicant respectfully submits

that this is a conclusory statement without support. This citation in the “nowthis” reference does not disclose that each person is entitled to only a single vote. Rather, the Examiner only makes a presumption. While the “nowthis” reference relates to tracking the number of people that found a review helpful, this citation in the “nowthis” reference does not disclose that the Amazon application increments the number tracking the persons finding the review helpful only if such person has not previously reviewed. There is no discussion in this citation in the “nowthis” reference for limiting a person to one review.

Because this reference does not disclose each element of claim 1, Applicant respectfully that the rejection of claim 1 under 35 U.S.C. §102 has been overcome. Claims 9 and 14 contain similar limitations. Accordingly, Applicant respectfully submits that the rejections of claims 9 and 14 under 35 U.S.C. §102 have been overcome. Because the claims that depend from claims 1, 9 and 14 depend from and further define such claims, Applicant respectfully submits that the rejection of the dependent claims under 35 U.S.C. §102 has been overcome.

§103 Rejection of the Claims

Claims 1-2 and 7-17 were rejected under 35 USC § 103(a) as being unpatentable over Epinions.com (“Epinions”) in view of Salas et al.(U.S. 6,230,185).

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the

proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).”

(emphasis added) MPEP 2143.01. Applicant respectfully submits that if modified as proposed, Salas would be unsatisfactory for its intended purpose. Salas allows contributors to a discussion group to enter in questions that are voted on by others in the discussion group. The Epinions reference does not allow for the entering of questions. Rather there is one type of question relating to rating the helpfulness of a review, which cannot be created or modified by the users. Therefore, if this modification to Salas were made, contributors would not be allowed to input different questions, which would change the intended purpose of the discussion group. In other words, if such a modification is performed, the contributors of the discussion group could not enter questions and voting thereof. This would preclude discussion and interaction among the users as intended in Salas.

Furthermore, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP § 2143. The Examiner must avoid hindsight. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

The Office Action indicated that the Epinions reference and Salas may be combined because both relate to typical HTML. See Office Action at ¶13 and ¶14. Applicant respectfully traverses, since that motivation comes from the Applicant’s disclosure or in hindsight, and not from either reference. As noted in the Office Action, there is nothing in the citations of the Epinions reference related to limiting a user to one indication of a review. Moreover, there is nothing in the citations of Salas that indicates that limiting the user to one vote is applicable to rating the usefulness of product/service reviews.

Moreover, Applicant respectfully submits that the cited references do not teach or suggest all the claim limitations. As stated above, among the differences, claim 1 recites

receiving at the database an indication that the user has clicked the interactive element, and incrementing a count of a stored number of indications for the review (1) in response to the indication and

(2) if the stored number of indications does not exceed one indication for the review from the user. (emphasis added).

The Office Action indicated that “Epinions did not expressly disclose the prohibition of a user to indicate usefulness of a review only once.” Office Action at ¶13. The Office Action then indicated that

since Epinions gathered voted opinions and was enabled for usage in a typical Internet browser application, and utilized well known and widely implemented HTML markup language for presentation dictation, an ordinary artisan would have been motivated to search the related arts to isolate teachings dealing directly with web page technology which disclosed specifics of the voting mechanism(s) available at the time of invention.

Office Action at ¶13.

The Office Action then stated that “[i]n these arts, Salas specifically disclosed a voting/polling mechanism utilized in typical HTML documents acting to optionally limit input from particular user(s) to one (1). See, inter alia, Column 16, Lines 33-54.” Office Action at ¶14.

In contrast to claim 1, as noted by the Office Action, Epinions does not disclose the prohibition of a user to indicate usefulness of a review only once. Moreover, the citation in Salas does not relate to whether a user has or has not found a review of a product or service helpful. Rather, the citation in Salas relates to the following:

In the course of conducting a discussion on a particular topic of interest, whether embedded or stand-alone, a contributor to the discussion may survey the discussion group members with regard to a particular question.

Salas at column 15, lines 47-50.

This citation in Salas does not disclose or suggest the voting on a usefulness of a product/service review. Rather, this citation in Salas relates to voting on a question posed by a contributor of a discussion group. Neither reference discloses voting on the usefulness of a

product/service review wherein a user is limited to one review. Therefore, neither Epinions nor Salas discloses or suggests all of the limitations of claim 1.

Applicant respectfully that the rejection of claim 1 have been overcome and that this claim is in condition for allowance. Claims 9 and 14 contain similar limitations. Accordingly, Applicant respectfully submits that the rejections of claims 9 and 14 have been overcome and such claims are now in condition for allowance. Because the claims that depend from claims 1, 9 and 14 depend from and further define such claims, Applicant respectfully submits that these dependent claims are now in condition for allowance.

Response to Arguments

In the Response to Arguments section, the Office Action stated the following:

It is submitted that this feature was not only expressly disclosed by, inter alia, Salas, as applied above, but would have been obvious to one of ordinary skill in the art at the time of the invention. Providing a person with one, and only one vote, has been a concern since the earliest of elections known to mankind.

Office Action at ¶17(2).

Examiner is taking official notice of having one vote on usefulness for a user for a given product/service review. Applicant respectfully traverses this official notice and requests the Examiner to provide a reference that describes such an element. Absent a reference, it appears that the Examiner is using personal knowledge, so the Examiner is respectfully requested to submit an affidavit as required by 37 C.F.R. § 1.104(d)(2).

Further, in the Response to Arguments section, the Office Action stated

there is no evidence that shows that the invention and (sic) claimed was reduced to practice prior to the prior art of record. . . . There is no supporting evidence to support the notion that the inventor invented this functionality or had a working model/product prior to disclosures of the others.

Office Action at ¶17(3).

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE

Serial Number: 09/731,019

Filing Date: December 7, 2000

Title: USER EVALUATION OF CONTENT ON DISTRIBUTED COMMUNICATION NETWORK

Page 11

Dkt: 2043.060US1

As set forth above, Applicant does not admit that the cited references are prior art and reserves the right to “swear behind” each of the cited references as provided under 37 C.F.R. 1.131.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 371-2103 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

DAVID J. WILSON

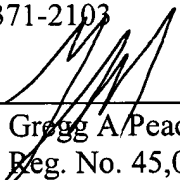
By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 371-2103

Date

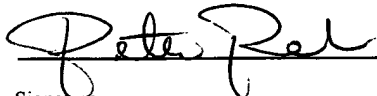
12-16-04

By


Gregg A. Peacock
Reg. No. 45,001

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of December, 2004.

Peter Rebuffoni
Name


Signature